



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 22 2004

James S. Paolino
827 Oronoke Rd., Apt. 8-5
Waterbury, Connecticut 06708-3940

RE: MUR 5453
James S. Paolino

Dear Mr. Paolino:

On May 18, 2004, the Federal Election Commission ("the Commission") found that there is reason to believe you violated 2 U.S.C. §§ 441b(a) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such

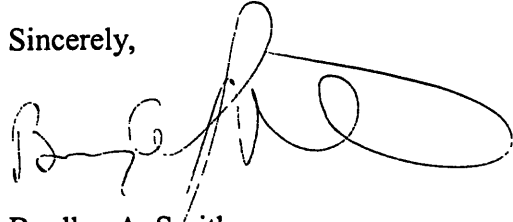
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counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley A. Smith', with a large, sweeping loop at the end.

Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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6 RESPONDENT: James S. Paolino

MUR 5453

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8 **I. GENERATION OF THE MATTER**

9 This matter was generated based on information ascertained by the Federal Election
10 Commission ("the Commission") in the normal course of carrying out its supervisory
11 responsibilities. *See* 2 U.S.C. § 437g(a)(2).¹ At issue is whether James S. Paolino is personally
12 liable for failing to meet his legal obligations as a former treasurer of the Giordano for U.S.
13 Senate Committee ("Committee") concerning the Committee's acceptance of an apparent
14 prohibited \$300,000 loan from Patriot National Bank ("the Bank") which was not supported by
15 adequate collateral, and apparent excessive individual contributions from family members in
16 connection with the loan's collateral.

17 **II. BACKGROUND**

18 Philip Giordano was a candidate for the office of United States Senator from Connecticut
19 in the 2000 election. The Committee² filed a 2000 April Quarterly Report on April 19, 2000,

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended, ("the Act"), herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

² According to Statements of Organization on file with the Commission, on February 8, 2000, James Paolino was named as treasurer of the Giordano Congressional Exploratory Committee. On March 17, 2000, Michael Blumenthal was named as treasurer of the Giordano for U.S. Senate Committee, the candidate's principal campaign committee. On July 15, 2000, Thomas M. Ariola, Jr. was named as deputy treasurer of the principal campaign committee. A subsequent letter from Mr. Paolino to the Commission explained that the 2000 July Quarterly Report marked the termination of the candidate's Exploratory Committee and the commencement of his principal campaign committee.

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disclosing a \$200,000 loan from the Bank, obtained on February 25, 2000.³ The Schedule C-1 included with the report showed the collateral for this loan as cash on deposit and future contributions to be received by the Committee. The Schedule C showed both the candidate and his father-in-law, Salvatore Trovato, as co-guarantors of the loan.⁴ Mr. Trovato was on the Board of Directors of the Bank at this time.⁵

By cover letter signed by the candidate, the Committee, on July 17, 2000, filed an amended 2000 July Quarterly Report, disclosing information about a loan incurred on July 14, 2000 from the Bank in the amount of \$300,000.⁶ The Schedule C-1 showed the collateral for the loan to be a certificate of deposit valued at \$300,000 and the Schedule C lists the candidate as guaranteeing the entire \$300,000. The attached loan document describes the collateral as "Patriot National Bank Certificate of Deposit in the Name of Dawn Giordano under Account No.

³ The Commission received an undated letter from Mr. Paolino stating that the Giordano Congressional Exploratory Committee obtained the original \$200,000 loan. The letter states, "in anticipation of the termination of the Exploratory Committee, the Giordano for U.S. Senate Committee has assumed this loan and increased its obligation to a total of \$300,000." For simplicity's sake, this analysis will refer to the loan as an obligation of "the Committee."

⁴ The Committee's 2000 July Quarterly Report, filed on July 10, 2000, continued to disclose the \$200,000 loan, but neither the candidate nor his father-in-law were listed as guarantors and the Schedule C-1 was blank.

⁵ The U.S. Securities and Exchange Commission Form 10-K for Patriot National Bancorp, Inc., a one-bank holding company for Patriot National Bank, lists Mr. Trovato as one of the Directors for Bancorp for the Fiscal Year ending December 31, 2000. *See also* U.S. Securities and Exchange Commission Schedule 14A, Proxy Statement, April 28, 2000 (according to the Proxy Statement, Mr. Trovato has been Vice Chairman of the Board of Directors of Bancorp and Patriot National Bank since 1995, and owns 103,258 shares of stock, or 4.72% of Bancorp's outstanding shares); *see also* David Hammer, *Giordano Campaign Loan Faces Scrutiny*, REPUBLICAN-AMERICAN, August 5, 2001 (reported that Mr. Trovato holds 118,658 shares of stock of Patriot National Bancorp, Inc., equal to 4.89% of Bancorp's outstanding shares).

⁶ Although the Schedule C-1 accompanying the report states that the disclosed loan was not restructured, a Schedule C-1 filed with the Committee's Second Amended 2000 July Quarterly Report shows that the \$300,000 loan represented a restructuring of the loan which occurred in February 2000. *See also* footnote 4.

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1 On August 30, 2000, the Committee filed a second amended 2000 July Quarterly Report,
2 which included a cover letter, a revised Schedule C-1 and copy of a revised loan agreement with
3 the Bank for the \$300,000 loan. Those documents appear to show that the collateral for the loan
4 was (1) the candidate's one-half interest in a certificate of deposit in the amount of \$300,000
5 (\$150,000), (2) the candidate's one-half interest in real estate owned by him and his spouse
6 (\$110,000), and possibly (3) the Committee's cash-on-hand or future contributions and receipts.⁷

7 The certificate of deposit is identified as a "Patriot National Bank Certificate of Deposit
8 in the names of Dawn Giordano & Philip A. Giordano under account the same
9 account number in which the certificate of deposit in the name only of Dawn Giordano had
10 formerly been shown. The real property making up part of the collateral is a Mortgage of
11 Property located at 157 Southwind Road, Waterbury, Connecticut. An attached sheet to the
12 revised loan agreement appears to show an opening of an account on July 14, 2000 with an initial
13 deposit of a check for \$300,000, and a withholding statement signed only by Dawn Giordano.
14 On the same sheet, additional information is displayed for what appears to be account number
15 (the number is difficult to read) in the names of the candidate and his wife,
16 showing it to be a "certificate of deposit" type account, with the signature of the candidate
17 followed by the date of and the signature of his wife followed by the date of

18 The cover letter accompanying the August 30 filing purports to be proffering an
19 "addendum" to the Committee's July 17, 2000 filing as an "attempt[] to correct all previous

⁷ The cover letter states that the Committee's cash-on-hand (then \$2,829.82) was also pledged as part of the collateral for the loan; however, the Schedule C-1 filed by the Committee states that future contributions and receipts in the amount of \$50,000 are pledged as collateral for the loan. The revised loan agreement does not mention either the Committee's cash-on-hand or future receipts as collateral for the loan. The Schedule C-1 states that the candidate's one-half value of the certificate of deposit and the real estate is valued at \$250,000. The Schedule C shows the candidate as the sole guarantor for the amount of \$300,000.

errors and . . . to conform our report to FEC regulations.” According to the cover letter:

As you know, the previous report collateralized the loan above mentioned with a Certificate of Deposit of \$300,000 held in the name of Dawn Ann Giordano, Philip A. Giordano’s spouse. The Certificate of Deposit was a gift made to Mr. and Mrs. Giordano from Mrs. Giordano’s father. Similar gifts were made to all Mrs. Giordano’s siblings and their spouses. The Certificate was given jointly in both names. This would allow us to collateralize \$150,000.00 of said loan with Mr. Giordano’s half interest in the Certificate.

With respect to the portion of the collateral composed of the real estate owned by the candidate and his wife, the cover letter states that the “fair market value of said premises is estimated to be \$220,000.00 of which \$110,000.00 of equity is imputed to” the candidate. The loan agreement itself does not show a fair market value for the real estate nor are there any accompanying papers documenting a fair market value of \$220,000. The mortgage deed between the Bank and the Giordanos, dated August 15, 2000, states that their arrangement is subject to an encumbrance on the real estate consisting of a “Mortgage to Metro Mortgage Corporation in the original principal amount of \$124,000.00 dated February 16, 1999.”

In response to two Requests for Additional Information (“RFAI”) dated September 19, 2000, and Second Notices dated October 12, 2000, the Committee filed amendments to its 2000 April and July Quarterly Reports on November 1, 2000.⁸ The cover letter dated October 28, 2000 states that the original \$200,000 loan, due to a misunderstanding on the part of the campaign and the Bank, “was made in violation of FEC rules,” but that the “loan was corrected as to FEC requirements and also increased to an indebtedness of \$300,000.” According to the cover letter, the \$300,000 loan

⁸ The RFAI dated September 19, 2000 inquired about the original \$200,000 loan and asked the Committee to provide the Schedules C and C-1 pertaining to that loan. On November 27, 2000 the Committee amended its 2000 July Quarterly Report for a fourth time and included the Schedules C and C-1 as requested.

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was secured with one half of a certificate of deposit held jointly by Mr. And [sic] Mrs. Giordano, on [sic] half the equity in Mr. and Mrs. Giordano's jointly held home, and cash on deposit in the Senate Committee account. The bank was satisfied that this was adequate collateral for this line of credit. I am under the impression that this also satisfies FEC requirements. The certificate of deposit was originally a family gift given to the Giordano family. The timing of the gift coincided with a financial event with the family. It was not related to the Senate committee[sic] and would have happened regardless of the Senate race.

On July 3, 2001, the Commission sent the Committee an RFAI referencing the amended 2000 July Quarterly Report dated August 21, 2000. The RFAI questioned whether the candidate's wife had made an excessive contribution in connection with the real estate portion of the collateral and sought an amendment clarifying information pertinent to that part of the loan transaction. The Commission sent the Committee a Second Notice on July 26, 2001 for failure to respond to the RFAI. The Committee has never responded to the RFAI.⁹

III. ANALYSIS

A treasurer is responsible for examining all contributions received for evidence of illegality and for ascertaining when contributions received, when aggregated with other contributions from the same contributor, exceed the contribution limits of the Act and 11 C.F.R. § 110 of the Commission regulations. 11 C.F.R. § 103.3(b). If a contribution presents a genuine issue as to whether it was made from a prohibited source, exceeds the contribution limits on its face or when aggregated with other contributions from the same individual, or if a treasurer later

⁹ One news article published in August 2001 quoted Charles Howell, President and Chief Executive Officer of Patriot National Bank as saying, "[t]he loan was re-paid at maturity [Feb 24, 2001] The details regarding the loan were reported to the Federal Elections [sic] Commission " David Hammer, *Giordano Loan Faces Scrutiny*, REPUBLICAN-AMERICAN, August 5, 2001. The article also reports that although Ariola told the reporter that in July 2001 he planned to file the FEC disclosure reports concerning the loan's repayment, the candidate was arrested in July and federal agents took possession of all the Committee's records at the time of his arrest, preventing Ariola from actually filing the reports concerning the loan's repayment See *id* None of the Committee's reports on file with the FEC to date disclose any information about the reported loan's repayment.

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discovers that a contribution is illegal based on new evidence not available at the time of receipt or deposit, a treasurer must follow the procedures set forth at 11 C.F.R. § 103.3(b). *Id.*

Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). Every political committee shall have a treasurer and may designate, on the committee's Statement of Organization, an assistant treasurer who shall assume the duties and responsibilities of the treasurer in the event of a temporary or permanent vacancy in the office or in the event the treasurer is unavailable. 11 C.F.R. § 102.7(a). Each treasurer of a political committee, and any other person required to file any report or statement under the Commission's regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. *See* 11 C.F.R. § 104.14(d).

Former treasurer Paolino signed, as treasurer, the disclosure reports referencing the loan transaction discussed *supra*, to wit: the 2000 April Quarterly Report and its amendments, as well as the 2000 July Quarterly Report and its amendments (except for the third amendment to the 2000 July Quarterly Report). These reports contained an apparent prohibited contribution from a national bank, and apparent individual excessive contributions from either the candidate's wife or father-in-law. By signing these disclosure reports, Paolino was responsible for detecting the apparent illegalities contained therein. 11 C.F.R. §§ 103.3(b) and 104.14(d).

It appears that the Bank made a prohibited contribution to the Committee in that the \$300,000 loan was not supported by adequate collateral. The Act prohibits national banks from making contributions in connection with any election and prohibits any candidate, political committee, or other person knowingly to accept or receive any such contributions. 2 U.S.C.

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1 § 441b(a). A loan by a national bank is not a contribution by the lending institution if it is made
2 in accordance with applicable banking laws and regulations and is made in the ordinary course of
3 business. 11 C.F.R. § 100.7(b)(11). A loan will be deemed to be made in the ordinary course of
4 business if, among other things, it is made on a basis which assures repayment. *Id.* A loan shall
5 be considered “made on a basis which assures repayment” if the lending institution making the
6 loan has perfected a security interest in collateral owned by the candidate or political committee
7 receiving the loan, the fair market value of the collateral is equal to or greater than the loan
8 amount and any senior liens as determined on the date of the loan, and the candidate or political
9 committee provide documentation to show that the lending institution has a perfected security
10 interest in the collateral. 11 C.F.R. § 100.7(b)(11)(i)(A)(I).

11 The candidate’s share of the certificate of deposit and the real estate purportedly
12 collateralizing \$150,000 and \$110,000, respectively, of the \$300,000 loan from the Bank, falls
13 short by approximately \$40,000. From the available information, it appears that the loan was
14 under-collateralized. Therefore, the Bank made, and the Committee accepted, a contribution
15 prohibited by 2 U.S.C. § 441b(a).

16 The circumstances surrounding the receipt and ownership of the certificate of deposit and
17 the valuation of the candidate’s equity in his home, both of which were used to collateralize a
18 \$300,000 loan to the Committee, raise issues as to possible excessive contributions from the
19 candidate’s wife and his father-in-law. The Act prohibits any person from making contributions
20 “to any candidate and his authorized political committee with respect to any election for Federal
21 office which, in the aggregate, exceeds \$1,000.” 2 U.S.C. § 441a(a)(1)(A). The Act also
22 prohibits any individual from making “contributions aggregating more than \$25,000 in any
23 calendar year.” 2 U.S.C. § 441a(a)(3). Political committees are prohibited from knowingly

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1 accepting excessive contributions. *See* 2 U.S.C. § 441a(f). Further, no officer or employee of a
2 political committee shall knowingly accept a contribution for the benefit of a candidate in
3 violation of any limitation imposed on contributions by the Act. *See id.* Contributions from
4 members of a candidate's family are subject to the same limits that apply to any other
5 individuals. *See* S. Conf. Rep. No. 93-1237, at 58 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5587,
6 5627 ("[T]he immediate family of any candidate shall be subject to the contribution limitations
7 established by this legislation.....[A]n immediate family member would be permitted merely to
8 make contributions to the candidate in amounts not greater than \$1,000 for each election
9 involved."); *see also* *Buckley v. Valeo*, 424 U.S. 1, 53 n.59 (1976) (upholding application of
10 contribution limitations to family members).

11 Mr. Giordano was a candidate by July 14, 2000 when his father-in-law purportedly gifted
12 the \$300,000 certificate of deposit.¹⁰ As noted *supra*, the Committee asserted that it realized that
13 the original \$200,000 loan, for which the candidate's father-in-law, Mr. Trovato, was a
14 guarantor, "violated FEC rules" (presumably because Mr. Trovato's guarantee would constitute
15 an excessive contribution on its face pursuant to 2 U.S.C. §§ 441a(a)(1)(a) and (a)(3) and
16 11 C.F.R. §§ 110.1(b) and 110.5(b)). The timing of the transmission of the certificate of deposit
17 (or the funds to purchase it) to be used as collateral for the restructured \$300,000 loan indicates
18 that it may have been an attempt to accomplish a similar result through alternative means.
19 Moreover, the conflicting information concerning whether the certificate of deposit was in the
20 name of the candidate's wife alone or in both names, the confusing account opening information,

¹⁰ Giordano's Committee reported \$55,900 in contributions and \$197,900 in expenditures on its 2000 April Quarterly Report. These figures are well in excess of the threshold amount of \$5,000 in aggregate contributions or aggregate expenditures required to meet the definition of the term "candidate" under 2 U S C § 431(2)

1 and the discrepancies whether the Committee's cash-on-hand or future receipts were part of the
2 collateral bear further scrutiny. Among the possible circumstances, if the candidate's father-in-
3 law gifted the certificate of deposit to both the candidate and his wife, that gift might constitute
4 an excessive contribution by him to the candidate.¹¹ If, on the other hand, the candidate's father-
5 in-law gave his daughter \$300,000, and she in turn used that money to purchase a \$300,000
6 certificate of deposit for herself and the candidate, that might result in an excessive contribution
7 by the candidate's wife to the candidate.

8 With respect to the real estate portion of the collateral, the revised loan agreement showed
9 a \$124,000 preexisting mortgage on the property in 1999. Although the principal balance of the
10 mortgage likely had fallen slightly by 2000, for purposes of this analysis, and assuming that
11 \$220,000 was indeed the property's fair market value, the candidate's equity in the home appears
12 to have been approximately one-half of \$220,000 (FMV) minus \$124,000 (the amount of the
13 mortgage), or \$48,000, rather than the \$110,000 stated as collateral for the loan. There is a
14 possibility, if the preexisting mortgage had been considerably paid down by 2000, that the
15 candidate and his wife together had enough equity in the home to support the collateral; but by
16 needing more than the candidate's one-half interest for this purpose, the candidate's wife may
17 have made an excessive contribution. While a candidate may obtain a loan on which his or her
18 spouse's signature is required when jointly owned assets are used as collateral for the loan, the
19 spouse is not considered a contributor to the candidate's campaign if the value of the candidate's

¹¹ Candidates for federal office may make unlimited expenditures from personal funds, including from gifts of a personal nature which had been customarily received prior to candidacy. See 11 C F R § 110.10(b)(2) However, the Commission currently lacks information that the certificate of deposit fits into this category

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share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign. 11 C.F.R. § 100.7(a)(1)(i)(D).

If the candidate's wife or father-in-law made excessive contributions to the candidate or the Committee, they may have violated 2 U.S.C. §§ 441a(a) (1) and (3), and the Committee may have violated 2 U.S.C. § 441a(f) for accepting excessive contributions. Any candidate who receives a contribution in connection with his or her campaign shall be considered as having received that contribution as an agent of his or her authorized committee. *See* 2 U.S.C. § 432(e)(2).

There is no evidence that former treasurer Paolino refunded or took the appropriate steps to remedy the apparent prohibited bank contribution or the excessive individual contributions in accordance with 11 C.F.R. § 103.3(b). As such, he failed to fulfill his responsibilities under the Act and the Commission's regulations, and is personally liable for such failure. *See id.*

Therefore, there is reason to believe former treasurer James S. Paolino violated 2 U.S.C. §§ 441a(f) and 441b(a) in his personal capacity.

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